

SULLIVAN REPORTING COMPANY, by
Lisa Sheehy, CSR No. 084-002867

I N D E X

E X H I B I T S

12	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
13	ComEd		
14	1		139
15	2 & 2C		144
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1 JUDGE GILBERT: Pursuant to the authority of
2 the Illinois Commerce Commission, I now call
3 Docket 03-0391.

4 If I could have appearances for record,
5 please, beginning with the applicant.

6 MR. BERNET: Good afternoon, your Honor.

7 Richard Bernet, Exelon Business
8 Services Company, 10 South Dearborn, Suite 3500,
9 Chicago, 60603, on behalf of the petitioner,
10 Commonwealth Edison Company.

11 MR. FEELEY: Representing Staff of the
12 Illinois Commerce Commission, John C. Feeley, Office
13 of General Counsel, Illinois Commerce Commission;
14 address is 160 North LaSalle Street, Suite C-800,
15 Chicago, Illinois 60601.

16 JUDGE GILBERT: This is the long-awaited
17 evidentiary hearing in the case.

18 It seems like the biggest task at this
19 point is to correctly identify all the materials that
20 will be admitted into the record.

21 Let me ask both attorneys. It is
22 correct, is it not, that all testimony and exhibits

1 will go into the record without objection and without
2 cross-examination?

3 MR. FEELEY: That's correct for staff.

4 MR. BERNET: That's correct, your Honor.

5 JUDGE GILBERT: Let's start identifying the
6 things that need to go into the record.

7 Let's go by number. Let's see.

8 ComEd 1.0 -- or just ComEd Exhibit 1, I guess. It
9 doesn't appear to be 1.0 -- is testimony of Ronald E.
10 Dyslin, D-y-s-l-i-n. And I understand there was a
11 version of this testimony filed, perhaps, in October
12 of --

13 MR. BERNET: I believe it was October 15th.

14 JUDGE GILBERT: All right. Of 2003.

15 And now there is a more-recent version
16 which, I think, was filed either yesterday or today;
17 is that correct?

18 MR. BERNET: Today.

19 JUDGE GILBERT: Today. All right.

20 So the version of Mr. Dyslin's
21 testimony that is dated September 28th, 2005, will be
22 admitted as ComEd 1.

1 (ComEd Exhibit No. 1 admitted
2 into evidence)

3 JUDGE GILBERT: And there are two attachments
4 to that?

5 MR. BERNET: No.

6 JUDGE GILBERT: No attachments to that.

7 MR. BERNET: Correct.

8 JUDGE GILBERT: I'm sorry.

9 MR. BERNET: And I have a copy of the
10 affidavit and testimony. And just so the record's
11 clear, the testimony is identified as "corrected
12 testimony of Mr. Dyslin."

13 JUDGE GILBERT: And this has been filed on
14 E-docket?

15 MR. BERNET: Yes.

16 JUDGE GILBERT: I have the affidavit of
17 Mr. Dyslin. I have a copy of the testimony that's
18 being admitted as ComEd 1. And just in case I haven't
19 said the magic words precisely, this is admitted.

20 ComEd Exhibit 2 is the direct
21 testimony of Thomas W. Kay, K-a-y, and there's a
22 version of that being offered today that is not the

1 same, I believe, as the version that was filed in
2 2003. Is that correct?

3 MR. BERNET: That's correct.

4 The difference between this
5 document -- it's the amended direct testimony of
6 Thomas W. Kay, the confidential version.

7 The difference between this document
8 and what was previously filed on October 15th, 2003,
9 is this document reflects the updated position of
10 Mr. Kay who was -- at the time he filed testimony, he
11 was the manager of transmission reinforcement planning
12 for Exelon Energy Delivery Company.

13 He is now the manager of power tools
14 and project management for Commonwealth Edison, so
15 substantively, that is the difference. He's
16 testifying with respect to his current title. That's
17 the substance of the difference between what was filed
18 in October of '03 and what's filed now.

19 The other -- actually, the other
20 difference is attached to his testimony as TWK-2 is a
21 confidential and proprietary document called
22 "Transmission System Impact Study for Ford City Lines

1 1322 and 1324."

2 JUDGE GILBERT: Okay. Let me just make sure
3 I have an entirely clear record.

4 First of all, you said part of what he
5 is now is manager of power tools. Did you mean to say
6 that?

7 MR. BERNET: Yes.

8 JUDGE GILBERT: Okay.

9 MR. BERNET: He's manager of power tools
10 project management for Commonwealth Edison Company.

11 JUDGE GILBERT: I just thought you might have
12 misspoken. Power tools, I'm thinking of a hand-held
13 drill.

14 MR. BERNET: Me too.

15 JUDGE GILBERT: So you said that there's a
16 proprietary version and a public version. Is that
17 correct?

18 MR. BERNET: That's correct.

19 Today on E-docket we filed a public
20 version of Amended ComEd Exhibit 2 which has
21 redactions where the confidential information appears
22 in Mr. Kay's testimony.

1 JUDGE GILBERT: So have you filed then two
2 different versions of ComEd Amended Exhibit 2?

3 Have you filed a public version and a
4 private version --

5 MR. BERNET: No, we have not --

6 JUDGE GILBERT: -- proprietary version? I'm
7 sorry.

8 MR. BERNET: We have not filed a confidential
9 version.

10 JUDGE GILBERT: But intend to.

11 MR. BERNET: That's correct.

12 JUDGE GILBERT: Because I will need to
13 designate those differently.

14 ComEd 2 will be the public version of
15 the amended testimony of Mr. Kay. ComEd 2P will be
16 the proprietary version of the amended testimony of
17 Mr. Kay. And as I understand it, the public version
18 has been filed.

19 MR. BERNET: That's correct.

20 JUDGE GILBERT: And that was filed today.

21 MR. BERNET: That's correct.

22 JUDGE GILBERT: The proprietary version will

1 be filed after we've dealt with the protective order
2 that you've also requested.

3 MR. BERNET: That's correct.

4 I don't know if this is helpful to
5 you, but in the -- on the face of the document that
6 was filed today, it says "public version."

7 On the face of the document I'm going
8 to hand you, it says "confidential version," so I
9 don't know if you -- if that's acceptable to you,
10 rather than having 2P versus 2.0.

11 They are different if you look at
12 them --

13 JUDGE GILBERT: Okay.

14 MR. BERNET: -- on the face. But that's up
15 to you. I mean, I'm happy either way.

16 JUDGE GILBERT: So you've premarked it as
17 2-Proprietary, correct?

18 MR. BERNET: No. We've premarked it Amended
19 ComEd Exhibit 2, and then it's got a legend under the
20 name. It says "confidential version."

21 JUDGE GILBERT: Okay. Then let me change
22 what I said.

1 The confidential version will be
2 marked as ComEd 2C --

3 MR. BERNET: Okay.

4 JUDGE GILBERT: -- rather than P, since
5 you've used the word "confidential."

6 MR. BERNET: Okay.

7 JUDGE GILBERT: And ComEd 2 and ComEd 2C are
8 admitted.

9 (ComEd Exhibits Nos. 2 and 2C
10 admitted into evidence)

11 JUDGE GILBERT: And now there are two
12 attachments. There are two attachments to each of
13 those -- well, wait a minute.

14 ComEd 2 has TWK-1, which is a public
15 document, and it also has TWK-2, which is a
16 confidential document. So the TWK-2 that is attached
17 to the public version will simply be a cover page, as
18 I --

19 MR. BERNET: That's correct.

20 JUDGE GILBERT: -- understand it.

21 And then "TWK-2 confidential" will
22 have the actual text of TWK-2.

1 MR. BERNET: That's correct.

2 And also attached to that is the
3 affidavit of Mr. Kay.

4 JUDGE GILBERT: All right. Let me do this
5 once again, because I may not have understood you.

6 You've provided three copies of
7 ComEd 2C for the court reporter, and you've handed me
8 one. So I have four copies in hand right now of the
9 confidential version of Mr. Kay's testimony.

10 Is there also a set of documents that
11 are not entitled "confidential version"?

12 MR. BERNET: Yes.

13 JUDGE GILBERT: But these are new documents.
14 These have not been filed until today.

15 MR. BERNET: Correct.

16 JUDGE GILBERT: And those are on E-docket
17 already.

18 MR. BERNET: That's right.

19 JUDGE GILBERT: So I don't need those in
20 hand.

21 MR. BERNET: Okay.

22 JUDGE GILBERT: That's fine then. And we'll

1 mark -- the court reporter will mark the three copies,
2 and I have one in hand of 2C.

3 Now for the protective order --

4 MR. BERNET: We still have one more exhibit.

5 JUDGE GILBERT: Yeah. I just want to do the
6 protective order --

7 MR. BERNET: Fine.

8 JUDGE GILBERT: -- because that has to do
9 with part of ComEd 2C.

10 MR. BERNET: Okay.

11 JUDGE GILBERT: So the motion for a
12 protective order refers to critical energy
13 infrastructure information that is contained in the
14 attachment to Mr. Kay's testimony, the TWK-2, and I
15 think there were also references to that attachment in
16 Mr. Kay's testimony.

17 Those references appear in ComEd 2C,
18 and they are redacted from ComEd 2. Is all of that
19 correct?

20 MR. BERNET: That's correct.

21 JUDGE GILBERT: Mr. Feeley, any concerns with
22 the motion for protective order?

1 MR. FEELEY: Staff has no objection to the
2 motion for protective order, and the protective order,
3 as prepared by ComEd, is acceptable to staff.

4 JUDGE GILBERT: Mr. Bernet, let me ask you --
5 because I read over of the protective order that
6 you've provided.

7 In Paragraph 8 ComEd addresses the
8 return of the confidential materials to ComEd within
9 15 days after a final and unappealable order is
10 entered.

11 Am I one of the persons who must
12 return the copy to you? I mean, I don't object to
13 that. I just want to know if you expect me to do it.

14 MR. BERNET: Can we go off the record?

15 JUDGE GILBERT: We'll go off the record for a
16 moment.

17 (Discussion off the record)

18 JUDGE GILBERT: So I posed the question to
19 Mr. Bernet, as to what my status would be under the
20 protective order, as to whether I would be subject to
21 Paragraph 8 in that I would be among "all persons," or
22 whether I would be subject to Paragraph 11, which

1 refers to commission staff personnel.

2 And, Mr. Bernet, what is your response
3 to that?

4 MR. BERNET: My response is that you would be
5 subject to Paragraph 11 of the order.

6 JUDGE GILBERT: Okay. Thanks very much.

7 The order is fine with me. I enter
8 it. And just to be clear, the protective order
9 itself, as presented by ComEd, as just explained by
10 Mr. Bernet and to which Mr. Feeley has no objection,
11 is fine with me.

12 All right. Moving on then to ComEd 3,
13 direct testimony of Gene Ransom, R-a-n-s-o-m, and,
14 again, we have an amended version of his testimony.

15 MR. BERNET: That's correct.

16 JUDGE GILBERT: And that should be considered
17 dated and filed today. Is that not true?

18 MR. BERNET: That's correct.

19 JUDGE GILBERT: Okay.

20 MR. BERNET: And the reason for the
21 amendment, just so we're clear, is to reflect the fact
22 that since June of '03, Mr. Ransom has changed

1 positions.

2 At the time he filed his original
3 direct testimony in October of 2003, he was the
4 overhead transmission line supervisor for Commonwealth
5 Edison Company. Now he is the manager of transmission
6 engineering for Commonwealth Edison Company.

7 JUDGE GILBERT: Okay. And other than that,
8 there's been no change to the substance of his
9 testimony.

10 MR. BERNET: Correct.

11 JUDGE GILBERT: ComEd 3 Amended is admitted.
12 (ComEd Exhibit No. 3 Amended
13 admitted into evidence)

14 MR. BERNET: And, again, I have the affidavit
15 of Mr. Ransom attached.

16 JUDGE GILBERT: For my purposes, the
17 affidavits that are attached to the ComEd exhibits are
18 part of the respective exhibits themselves. I'm not
19 admitting those as separate exhibits.

20 Mr. Bernet, you were kind enough to
21 prepare a binder for me with all of the documents that
22 have been created as part of this case that includes

1 exhibits, the petition itself, transcripts, motions,
2 ex parte memoranda.

3 In Tab 2 there's a Part 300
4 information packet. That was not attached to the
5 petition but was filed shortly thereafter. Is that
6 correct, or was it attached?

7 MR. BERNET: It was not attached. It was not
8 attached to the petition.

9 JUDGE GILBERT: Okay.

10 MR. BERNET: I believe it was filed at or
11 about the same time as the petition, but I don't have
12 the docket sheet in front of me.

13 JUDGE GILBERT: It shows June 13 of '03.

14 MR. BERNET: I do think that's the date we
15 filed the petition.

16 JUDGE GILBERT: It has a verification for the
17 petition signed June 12. The petition itself is dated
18 June 12 but may have been filed June 13th.

19 In any event, I just want to make sure
20 that we have a clear designation of that document in
21 the record. If it's essentially part of the petition,
22 we needn't do anything further. If it's not, then

1 perhaps we need to make this an additional exhibit.

2 Mr. Bernet, do you have any sense of
3 what the status is of this document?

4 MR. BERNET: The status of the Part 300?

5 JUDGE GILBERT: Yeah. I'm not sure --

6 MR. BERNET: My understanding --

7 JUDGE GILBERT: -- if we should treat this as
8 part of the petition or as a separate document.

9 MR. BERNET: Can we go off the record again?

10 JUDGE GILBERT: Yeah. We'll go off.

11 (Discussion off the record)

12 JUDGE GILBERT: The Part 300 information
13 packet that we were just talking about is not really
14 essential to ComEd's evidentiary presentation in
15 support of the application, so we will not make it an
16 exhibit. It exists in the commission's records, and
17 that's that.

18 All right. Is there anything else
19 that ComEd wants admitted into the evidentiary record?

20 MR. BERNET: Yes, your Honor.

21 Exhibit A to the petition is a map
22 that shows the location of the transmission line, and

1 Exhibit B to the petition is the legal description for
2 the line itself.

3 ComEd would request that these two
4 exhibits be admitted into the record so the order is
5 clear with respect to what is precisely being
6 certified. I have copies.

7 JUDGE GILBERT: Let's go off for a moment.

8 (Discussion off the record)

9 JUDGE GILBERT: The way we're going to handle
10 this is that what had been Exhibit A filed in
11 connection with the petition or as an attachment to
12 the petition has been redesignated as ComEd Exhibit 4,
13 and that's, as you said, a map of the area pertinent
14 to the application.

15 ComEd 5 is a document that was
16 attached to the petition and the amended petition as
17 Exhibit B, and we're changing that to ComEd Exhibit 5,
18 and it's the legal description of the property that's
19 pertinent to this case.

20 Both of those are admitted.

21 (ComEd Exhibits Nos. 4 and 5
22 admitted into evidence)

1 JUDGE GILBERT: Anything else for ComEd?

2 MR. BERNET: No, no other evidence.

3 JUDGE GILBERT: Okay. So ComEd's evidentiary
4 case is complete.

5 And now, Mr. Feeley?

6 MR. FEELEY: All right. Staff has two
7 exhibits. Both were filed on E-docket. The first is
8 ICC Staff Exhibit 1.0, direct testimony of Greg
9 Rockrohr, dated May 2004. It's seven pages of
10 narrative text and a cover page. It was filed on
11 E-docket May 17th, 2004.

12 Staff's second Exhibit, Staff
13 Exhibit 2.0, is the affidavit of Greg Rockrohr.
14 It's one page. It was filed on E-docket on June 8th,
15 2004.

16 JUDGE GILBERT: Did you already -- you've
17 already filed the affidavit as an exhibit, or no?

18 MR. FEELEY: Yeah, we did. It's marked,
19 correct.

20 JUDGE GILBERT: It's already marked as 2.0?

21 MR. FEELEY: Yeah.

22 JUDGE GILBERT: Well, no undoing what's done,

1 so we'll make that Staff 2.0.

2 I would much rather treat an affidavit
3 as an attachment to an exhibit.

4 MR. FEELEY: Okay.

5 JUDGE GILBERT: But if it's already marked
6 and it's already on E-docket, there's no point in
7 fighting about it. So 2.0 is Mr. Rockrohr's, and
8 that's admitted; and 1.0, which is his testimony, is
9 also admitted.

10 (Staff Exhibits Nos. 1.0 and
11 2.0 admitted into evidence)

12 JUDGE GILBERT: Anything else from staff?

13 MR. FEELEY: No. That's all of staff's
14 evidence.

15 JUDGE GILBERT: I think that closes our
16 evidentiary record. I think it can be marked heard
17 and taken.

18 Let's go off the record for a moment.

19 (Discussion off the record)

20 JUDGE GILBERT: Mr. Bernet has indicated that
21 ComEd will provide a draft order. Mr. Feeley will not
22 be preparing one but will be reviewing Mr. Bernet's

1 draft.

2 And at some point, I guess, that will
3 be presented to me after the two of you have agreed on
4 terms. Is that correct?

5 MR. BERNET: Yes.

6 MR. FEELEY: Yes.

7 JUDGE GILBERT: Okay. Sounds great. I think
8 we're finally done.

9 Anything else anyone wants to add for
10 the record?

11 MR. BERNET: Nothing for ComEd.

12 Thank you very much for your help and
13 time.

14 JUDGE GILBERT: Okay.

15 MR. FEELEY: Okay.

16 JUDGE GILBERT: We are through.

17 (All presented exhibits
18 were marked in triplicate
19 by the court reporter at
20 the end of the hearing)

21 HEARD AND TAKEN....

22